

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.809 OF 2015

Nemjee Popatlal Savla

.... Petitioner

Vs.

University of Mumbai & Others

.... Respondents

Ms Meena H. Doshi with Ms S. John for the Petitioner.

Mr. Rui A. Rodrigues for the Respondents.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : AUGUST 02, 2016

P.C:

1. The petitioner is a citizen of India, and when he filed this writ petition he was 73 years of age. He is a senior citizen and has approached this Court only because, according to him, he is anxious to obtain a Ph.D/Doctorate during his life time.

2. The respondent No.1 is the University of Mumbai through the concerned Department, namely, Civics and Politics, whereas the others are the officers of the University.

3. The petitioner, a senior citizen, has passed B.Com examination. At the relevant time, he was in Myanmar, earlier known as Burma. The University of Rangoon has awarded Bachelor's Degree of Commerce to the petitioner. The petitioner has also a Master's Degree in Arts from the University of Mumbai. He shifted to Mumbai on account of his desire to study further. He completed his Master of Arts Degree in 2004. He is a businessman and a Director in a private limited company. He was desirous, despite his advanced age, to obtain the additional qualification, Ph.D. in Political Science. He was informed that in terms of the Rules for Admission, Registration and Course Work for Ph.D. programme, he would have to undergo an elaborate process. The elaborate process is described in para 4.6 of the writ petition. That is, the petitioner has to submit an application for appearance at the Ph.D. Entrance Examination (for short, "PET"). Thereafter, he has to appear for, what is styled as, an Aptitude Test. The petitioner duly appeared for the entrance test and in paras 4.6 and 4.7 he has stated that he was allowed to appear for the entrance test held in 2011-2012. The petitioner

was not successful in clearing the same. However, it is claimed by him that, in 2012 he cleared this examination.

4. Thereafter, the successful candidate has to apply in the prescribed form and appear for, what is styled as, an Aptitude Test. The petitioner passed this PET exam, took further steps of contacting a Professor and he chose a recognized teacher. The grievance of the petitioner is that, he was informed that the validity period of the examination, styled as PET, expires in July, 2015. That is why he informed the authorities that he be allowed to proceed with the programme. However, it is his grievance that he was forced to appear for, what is styled as, Aptitude Test. It is his case, that having cleared the entrance examination there was no reason for subjecting him to such a test. It is in such circumstances that the petitioner has challenged the decision taken and informed vide letters dated 29-11-2013 and 5-9-2014, annexures-H & K respectively. For ready reference, we reproduce herein below the relevant portions of these annexures. They are also reproduced because they incorporate the University's academic policy. The petitioner

has been informed on 5-9-2014 that his admission to Ph.D. course is possible only after his clearing and passing the Aptitude Test. The petitioner was informed that he should contact the Head, Department of Civics and Politics for such a test. It is on this footing that after making a grievance before the Grievance Redressal Committee, eventually the petitioner has filed this writ petition.

“Annexure-H (Dated 29-11-2013)

Please refer to your letter dated 22nd November, 2013.

In this connection, I am to inform you that candidate for being eligible for admission to Ph.D. must have satisfy the following condition:-

0.5473 (I):

1. The Candidate must have passed the Master's Degree examination in the faculties of Arts or Science or Commerce or Technology or Medicine or Ayurveda or Law or Fine Arts or Unani Medicine of this University or of any other University recognized by this University as equivalent thereto with minimum of fifty five percent marks and fifty percent marks in the case of Reserved Category.

OR

6. The candidate must have passed the Bachelor's Degree examination in the faculties of Arts or Science or Commerce or Technology or Medicine or Ayurveda or Law or Fine Arts or Unani Medicine of this University or of any other University recognized by this University as equivalent thereto on the condition that he/she shall clear an Aptitude Test conducted as per ordinance 5473(II).

Since, you have passed M.A. Degree with 53% marks, you are not eligible for Ph.D. degree. However, you can join the Ph.D. course on the basis of having your B.Com degree examination, as per the provision of O.5473 (II) which is mentioned below:-

(II) **Aptitude Test:** Candidates who desire to pursue the Ph.D. degree course under various faculties and various subjects and who are to be registered as per ordinance 5473 (I) 4 or 6 (i.e., those who are candidates with Bachelor's degree and /or sponsored by National Laboratories etc.) shall clear an Aptitude test conducted by the concerned department of the University and if there is no University department in a particular subject the Vice-Chancellor shall decide appropriate modality to conduct the Aptitude test.

If you are deciding to join on the basis of B.Com degree passed by you, you have to clear the faculty , change examination under O.5476 which is also mentioned below:-

O.5476: Where a candidate desires to register for the Ph.D. degree in a Faculty different from the one in which he/she obtained his/her Master's Degree, he/she must satisfy the conditions of O.5473.

He/She shall submit an application to the Controller of Examinations along with the prescribed processing fee for permission to do so through the recognized guide under whom he/she proposes to work and the Head of the concerned institution through which he/she desires to be registered. The candidate shall also submit a relevant proposal with this application. The Research and Recognition Committee of the respective Board/Ad-hoc Board/Committee will recommend the names of two experts to scrutinize the proposal.

Subsequently the Research and Recognition Committee of the respective Board shall interview the candidate. The above mentioned experts shall be invited as special invitees at the Research Committee will test the fitness of the candidate to undertake the proposed topic of research. The committee in the report will clearly recommend the proposal for acceptance or rejection of resubmission with modification. The report of the Research and Recognition Committee of the respective Board shall be placed before the Vice-Chancellor for consideration.

In case the proposal of any candidate for change of faculty for registration at the Ph.D. degree course is recommended for revision with modification by the Committee, such candidate will not be required to pay again the processing fee prescribed by the University.

On completing these formalities you can be admitted to Ph.D. course with following the procedure.”

“Annexure-K (Dated 5-9-2014)

Please refer to your letter and email addressed to Controller of examination and Pro-vice Chancellor of this University regarding your admission to Ph.D. course in this University.

In this connection, I am to inform you that your admission matter has been discuss with both the authorities and I am directed to inform you that your admission to Ph.D. course is possibly only after your passing the Aptitude Test.

You are, therefore, requested once again to contact to the Head Dept of Civics and Politics, for conducting your aptitude test.”

5. An affidavit in reply has been filed by the Deputy Registrar, University of Mumbai. Apart from asserting that this is an academic decision, what is then pointed out is that there is no compliance with Ordinance 5473. The petitioner has secured less than 55% mark at the M.A. Degree Examination. His case would fall in Clause 6 of Ordinance 5473. It is, therefore, mandatory for him to undergo the Aptitude Test.

6. As far as para 4.7 of the writ petition is concerned, the allegations therein are dealt with in para 5 of the affidavit

and it is submitted that there is no force in the contentions or the allegation that the petitioner was compelled to take the Aptitude Test. Once the petitioner is obliged to appear at such a test and that is how the matter has been looked into and approached by the authorities, then, it is futile to urge that this Court should interfere and assist the petitioner in its writ jurisdiction.

7. When this matter was argued before us and we fully heard Ms Doshi, appearing for the petitioner, and Mr. Rodrigues, appearing for the respondents, on instructions, Mr. Rodrigues submits that the petitioner need not have any apprehension for he would not be required to appear again in the entrance examination. Though the entrance examination was taken by the petitioner in the year 2012 and the validity of clearance of that examination was to expire in July, 2015, as stated by the petitioner, now that condition is relaxed. The outer limit has not been prescribed. However, as far as the Aptitude Test is concerned, that would have to be undergone by the petitioner and reliance is placed on Ordinance 5473 (Clause 6).

8. We have perused the petition and all annexures thereto, so also the affidavit in reply. We quite appreciate the anxiety of the respondents that the academic decision and by an expert in the field should not be interfered with by this Court unless it is found to be totally arbitrary, palpably erroneous, discriminatory and *mala fide*. It is not a decision which can be said to be unfair or grossly unreasonable either.

9. The University has taken a particular view of the Ordinance, according to Mr. Rodrigues.

10. Clause 6 of Ordinance 5473 reads as under:-

“6. The candidate must have passed the Bachelor's Degree examination in the faculties of Arts or Science or Commerce or Technology or Medicine or Ayurveda or Law or Fine Arts or Unani Medicine of this University or of any other University recognized by this University as equivalent thereto on a condition that he/she shall clear an Aptitude Test conducted as per Ordinance 5473(II).”

11. A bare perusal of this Ordinance would reveal that

the Degree of Doctor of Philosophy may be conferred upon candidate under various faculties in various subjects, except in the subjects of Education and Management Studies in the faculty of Arts and in the subjects of Occupational Therapy, Physical Therapy and Audiology and Speech Language Pathology, in the Faculty of Medicine provided that for the purpose of admission and registration the candidate satisfies the conditions. The condition and to the extent relevant for us is to be found in Clause 6. The candidate must have passed the Bachelor's Degree examination in the faculty of Art or Science or Commerce or Technology or Medicine or Ayurveda or Law or Fine Arts or Unani Medicine of the University of Mumbai or of any other University recognized by the University of Mumbai as equivalent thereto on a condition that he/she shall clear an Aptitude Test conducted as per Ordinance 5473(II). The Clause (II) reads as under:-

*“(II) **Aptitude Test:** Candidates who desire to pursue the Ph.D. degree course under various faculties and various subjects and who are to be registered as per Ordinance 5473(I) 4 or 6 (i.e., those who are candidates with Bachelor's degree and/or sponsored*

by National Laboratories etc.) shall clear an Aptitude test conducted by the concerned department of the University and if there is no University department in a particular subject, the Vice-Chancellor shall decide appropriate modality to conduct the Aptitude test.

This Aptitude Test has to be cleared for it is eventually based on that the University gauges and judges as to whether the candidate can undergo the studies for obtaining the doctorate.

12. After having found that the petitioner need not undergo the entrance examination again, as he has cleared it in the year 2012, but he would only be required to take up the Aptitude Test, that we are not inclined to interfere with the decision taken by the University. Eventually, it is for maintaining the academic standards that such decisions are taken. Merely because a candidate is a senior citizen, we cannot dispense with a condition which upholds the academic standards and interests. The University has a defined policy for awarding the Degree of Doctorate in Philosophy and that is conferred on the terms and conditions being fulfilled. The power to issue the Ordinance prescribing these terms and conditions is not challenged. In

such circumstances, we are not inclined to agree with Ms Doshi that the petitioner should not be made to undergo the Aptitude Test. Her argument was based on the grounds of the writ petition in which it is stated that though the petitioner may have obtained his Graduate Degree in Commerce from a distinct University, namely, the University of Rangoon in Myanmar, he has cleared the Master of Arts examination from the University of Mumbai. It is thus the petitioner's clearance of this examination that he was allowed to sit for the examination styled as PET in the year 2012 and having cleared it, Ms Doshi was submitting that the petitioner has been subjected to one test. The petitioner has in para 4.9 of the petition stated that he appeared for an interview on 16-8-2013 and was selected for the Ph.D programme. The Department of Civics and Politics by its letter dated 10-10-2013 informed the Controller of Examination of the selection of the petitioner for the Ph.D. programme. However, we have perused that communication and which is at page 46 of the paper-book. The petitioner was informed that, in the subsequent interview held on 16-8-2013 he was selected for

the Ph.D programme. This communication, dated 10-10-2013, was despatched without noticing the requirement of Ordinance 5473. That requirement could not have been dispensed with. The interview that the petitioner refers to in the communication of the University is not an Aptitude Test. That is a distinct requirement and which has to be complied with. Once the petitioner understood this requirement and in terms of the Ordinance, then, it is not open to him to urge that there was injustice done to him. There is no compulsion but it is a matter of academic policy of the University. The petitioner needs to be commended for his efforts at this advanced age, still, we cannot condone nor relax this requirement of taking the Aptitude Test, as desired by the petitioner.

13. For these reasons, we are not in agreement with the petitioner that he should be allowed to pursue his Ph.D. course on the footing that he has complied with all the preconditions or prerequisites. We are of the clear opinion that the petitioner has to take the Aptitude Test. He has waited for a considerably long time. He should, therefore, be subjected to this Test at the

earliest so that his academic pursuits are not frustrated and defeated.

14. As a result, we direct the respondents to hold the Aptitude Test for the petitioner and which we direct should be held as a special case expeditiously and out of turn, within four weeks from today. The petitioner will appear before the Head of the Department of Civics and Politics of the University of Mumbai at Kalina and this Test shall be taken by the authority who is designated as the Competent Authority. The Test shall be concluded in one day. The result should be communicated to the petitioner within two weeks from the date of taking the test. The writ petition is disposed of with these directions.

15. Needless to clarify that such directions are issued in the peculiar facts and circumstances of the petitioner's case, who is now nearing 75 years of age, but still anxious and keen to complete his Ph.D. This order shall not be treated as a precedent in any other case.

16. All concerned to act upon an authenticated copy of this order.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(S.C. DHARMADHIKARI, J.)